

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

United States of America,

Plaintiff,

v.

The State of Texas,

Defendant.

Case No. 1:21-cv-00796-RP

DECLARATION OF ERICK GRAHAM

I, Erick Graham, declare as follows:

1. My name is Erick Graham. I am over 21 years old and fully competent to make this declaration.
2. I have personal knowledge of each of the facts stated in this declaration, and everything stated in this declaration is true and correct.
3. I am a resident of Henderson County, Texas.
4. I am aware that the Texas Heartbeat Act, also known as Senate Bill 8, allows me to sue any individual or entity that violates the Act after it takes effect on September 1, 2021. *See* Tex. Health & Safety Code § 171.208.
5. I am also aware that the Texas Heartbeat Act exposes employers and insurance companies to private civil-enforcement suits if they pay for or reimburse the costs of a post-heartbeat abortion. *See* Tex. Health & Safety Code § 171.208(a)(2).
6. I have an interest in preserving my state-law right to sue individuals and entities that violate the Texas Heartbeat Act, a right that the United States is attempting to take away by asking this Court to enjoin every person in the world from suing to enforce Senate Bill 8 in any situation—even when they sue over conduct that is

clearly unprotected by the Constitution—and by asking this Court to enjoin the Texas judiciary from “maintaining *any* civil proceeding pursuant to S.B. 8.” Proposed Order, ECF No. 6-2 at 2 (emphasis added).

7. I have no intention of suing any abortion provider who violates Senate Bill 8, or any employee or volunteer of any such abortion provider.

8. Instead, I intend to sue only individuals and entities whose conduct is clearly unprotected by the Constitution, and who cannot plausibly assert an “undue burden” defense under section 171.209 of the Texas Health and Safety Code under the existing precedents of the Supreme Court.

9. Specifically, I intend to sue only employers and insurance companies who provide or arrange for coverage of post-heartbeat abortions. I also intend to sue the city of Austin, which has been using taxpayer money to subsidize the provision of post-heartbeat abortions. *See Zimmerman v. City of Austin*, 620 S.W.3d 473, 482 (Tex. App.—El Paso 2021, pet. filed).

10. I have decided to target these entities because the Supreme Court has made abundantly clear that there is no constitutional right to taxpayer subsidies or private insurance coverage of abortion, so there is no possible argument that any of my intended lawsuits would violate anyone’s constitutional rights. *See Harris v. McRae*, 448 U.S. 297, 325 (1980).

11. In addition, the entities that I intend to sue lack third-party standing to assert the constitutional rights of abortion patients under the tests for third-party standing established by the Supreme Court. *See, e.g., Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004).

12. I respectfully seek intervention to defend and preserve my state-law right to sue employers and insurance companies who provide or arrange for coverage of post-heartbeat abortions in violation of Senate Bill 8, as well the city of Austin over its efforts to subsidize post-heartbeat abortions performed in violation of Texas law.

This concludes my sworn statement. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 21, 2021


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ERICK GRAHAM

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

United States of America,

Plaintiff,

v.

The State of Texas,

Defendant.

Case No. 1:21-cv-00796-RP

DECLARATION OF JEFF TULEY

I, Jeff Tuley, declare as follows:

1. My name is Jeff Tuley. I am over 21 years old and fully competent to make this declaration.

2. I have personal knowledge of each of the facts stated in this declaration, and everything stated in this declaration is true and correct.

3. I am a resident of Henderson County.

4. I am aware that the Texas Heartbeat Act, also known as Senate Bill 8, allows me to sue any individual or entity that violates the Act after it takes effect on September 1, 2021. *See* Tex. Health & Safety Code § 171.208.

5. I am also aware that the Texas Heartbeat Act exposes individuals to private civil-enforcement suits if they perform or assist abortions that are clearly unprotected by existing Supreme Court doctrine, such as non-physician abortions, self-administered abortions, and post-viability abortions that are not necessary to preserve the life or health on the mother. *See* Tex. Health & Safety Code § 171.208.

6. I have an interest in preserving my state-law right to sue individuals and entities that violate the Texas Heartbeat Act, a right that the United States is attempting

to take away by asking this Court to enjoin every person in the world from suing to enforce Senate Bill 8 in any situation—even when they sue over conduct that is clearly unprotected by the Constitution—and by asking this Court to enjoin the Texas judiciary from “maintaining *any* civil proceeding pursuant to S.B. 8.” Proposed Order, ECF No. 6-2 at 2 (emphasis added).

7. I have no intention of suing any individual who performs or assists an abortion that is arguably protected by existing Supreme Court doctrine. I also have no intention of suing any pregnant woman who aborts or attempts to abort her unborn child. *See* Tex. Health & Safety Code § 171.206(b)(1) (forbidding such lawsuits).

8. Instead, I intend to sue only individuals and entities whose conduct is clearly unprotected by the Constitution, and who cannot plausibly assert an “undue burden” defense under section 171.209 of the Texas Health and Safety Code under the existing precedents of the Supreme Court.

9. Specifically, I intend to sue only individuals or entities that perform or assist abortions that are clearly unprotected under existing Supreme Court doctrine, which include: (a) non-physician abortions;¹ (b) self-administered abortions;² and (c) post-viability abortions that are not necessary to preserve the life or health on the mother.³

10. I have decided to target these individuals and entities because the Supreme Court has made abundantly clear that there is no constitutional right to abortion in any of these scenarios, so there is no possible argument that any of my intended lawsuits would violate anyone’s constitutional rights.⁴

1. *See Roe v. Wade*, 410 U.S. 113, 165 (1973); *Connecticut v. Menillo*, 423 U.S. 9, 9–10 (1975); *Mazurek v. Armstrong*, 520 U.S. 968, 971 (1997).

2. *See Roe*, 410 U.S. at 165.

3. *See Roe*, 410 U.S. at 164–65.

4. *See* notes 1–3 and accompanying text.

11. I respectfully seek intervention to defend and preserve my state-law right to sue individuals and entities that perform or assist abortions that fall outside the protections conferred by *Roe v. Wade*, 410 U.S. 113 (1973), and subsequent decisions of the Supreme Court.

This concludes my sworn statement. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 21, 2021

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JEFF TULEY

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

United States of America,

Plaintiff,

v.

Case No. 1:21-cv-00796-RP

The State of Texas,

Defendant.

DECLARATION OF MISTIE SHARP

I, Mistie Sharp, declare as follows:

1. My name is Mistie Sharp. I am over 21 years old and fully competent to make this declaration.
2. I have personal knowledge of each of the facts stated in this declaration, and everything stated in this declaration is true and correct.
3. I am a resident of Henderson County.
4. I am aware that the Texas Heartbeat Act, also known as Senate Bill 8, allows me to sue any individual or entity that violates the Act after it takes effect on September 1, 2021. *See* Tex. Health & Safety Code § 171.208.
5. I am also aware that the Texas Heartbeat Act exposes so-called abortion funds to private civil-enforcement suits if they pay for or reimburse the costs of a post-heartbeat abortion. *See* Tex. Health & Safety Code § 171.208(a)(2).
6. I have an interest in preserving my state-law right to sue abortion funds that violate the Texas Heartbeat Act, a right that the United States is attempting to take away by asking this Court to enjoin every person in the world from suing to enforce

Senate Bill 8 in any situation—even when they sue over conduct that is clearly unprotected by the Constitution—and by asking this Court to enjoin the Texas judiciary from “maintaining *any* civil proceeding pursuant to S.B. 8.” Proposed Order, ECF No. 6-2 at 2 (emphasis added).

7. I have no intention of suing any abortion provider who violates Senate Bill 8, or any employee or volunteer of any such abortion provider.

8. Instead, I intend to sue only individuals and entities whose conduct is clearly unprotected by the Constitution, and who cannot plausibly assert an “undue burden” defense under section 171.209 of the Texas Health and Safety Code under the existing precedents of the Supreme Court.

9. Specifically, I intend to sue only abortion funds who pay for other people’s abortions in violation of Senate Bill 8.

10. I have decided to target these entities because there is no constitutional right to pay for another person’s abortion, and there is no constitutional right to receive financial assistance from others when seeking an abortion. *See Harris v. McRae*, 448 U.S. 297, 325 (1980).

11. In addition, the abortion funds that I intend to sue lack third-party standing to assert the constitutional rights of abortion patients under the tests for third-party standing established by the Supreme Court. *See, e.g., Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004). Although the Supreme Court has allowed abortion *providers* to assert the third-party rights of abortion patients in constitutional litigation,¹ it has never allowed abortion funds to assert the constitutional rights of abortion patients.

12. I respectfully seek intervention to defend and preserve my state-law right to sue abortion funds that pay for post-heartbeat abortions in violation of Senate Bill 8.

1. *See, e.g., Singleton v. Wulff*, 428 U.S. 106, 113–18 (1976) (plurality opinion); *June Medical Services LLC v. Russo*, 140 S. Ct. 2103, 2118–20 (2020) (plurality opinion); *id.* at 2139 (Roberts, C.J., concurring).

This concludes my sworn statement. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 21, 2021

DocuSigned by:
Mistie Sharp
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MISTIE SHARP